

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

UNITED STATES OF AMERICA, and
THE STATE OF NORTH CAROLINA,

Plaintiffs,

v.

PLANTATION PIPE LINE COMPANY,

Defendant.

Civil Action No. 3:08-cv-500

COMPLAINT

The United States of America, by the authority of the Attorney General of the United States, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), and the State of North Carolina, acting at the request of the North Carolina Department of Natural Resources, through their undersigned attorneys, allege as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections 309(b) and (d), and 311(b)(7) of the Clean Water Act, as amended, ("CWA"), 33 U.S.C. §§ 1319(b), (d) and 1321(b)(7), seeking injunctive relief and civil penalties against the Plantation Pipe Line Company ("Plantation" or "Defendant") for the discharge of oil into navigable waters of the United States and adjoining shorelines, in violation of CWA Sections 301(a) and 311(b)(3), 33 U.S.C. §§ 1311(a), 1321(b)(3); and for the Defendant's failure to prepare and implement a Spill Prevention, Control and Countermeasure Plan ("SPCC Plan"), in violation of regulations promulgated at 40 C.F.R. Part 112, pursuant to CWA Section 311(j), 33 U.S.C. § 1321(j). This action is also brought

pursuant to N.C. Gen. Stat. §§ 143-215.83 and 143-215.1, seeking civil penalties against the Defendant for the discharge of oil into waters or lands within the State of North Carolina.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to CWA Sections 309(b) and 311(b)(7)(E), 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), and pursuant to 28 U.S.C. §§ 1331, 1345, and 1355.

3. Venue is proper in this District pursuant to CWA Sections 309(b) and 311(b)(7)(E), 33 U.S.C. §§ 1319(b), 1321(b)(7)(E), and pursuant to 28 U.S.C. §§ 1391, because Defendant is located, resides, or is doing business in this District.

4. The United States Department of Justice has authority to bring this action on behalf of the Administrator of EPA under CWA Section 506, 33 U.S.C. § 1366.

5. Notice of the commencement of this action has been given or will be given to the States of Virginia, Georgia, and North Carolina pursuant to CWA Section 309(b), 33 U.S.C. § 1319(b).

DEFENDANT

6. Plantation is a corporation organized and existing under the laws of the State of Delaware.

7. Plantation owns and/or operates a petroleum products pipeline system ("Pipeline System"). The Pipeline System includes at least 3,100 miles of pipe extending from Texas to Virginia, and traversing a number of States in between, including: Louisiana, Mississippi, Alabama, Georgia, Tennessee, South Carolina, North Carolina and Virginia.

STATUTORY BACKGROUND

Prohibition Against the Discharge of Pollutants

8. CWA Section 301(a), 33 U.S.C. 1311(a), prohibits the discharge of any pollutant by any person, except as otherwise authorized pursuant to specific provisions of the CWA.

9. CWA Section 502(5), 33 U.S.C. § 1362(5), defines “person” to include “an individual, corporation, partnership, association, State, municipality, commission, or political subdivision of a State, or any interstate body.”

10. CWA Section 502(6), 33 U.S.C. § 1362(6), defines the term “pollutant” to include solid waste, chemical wastes, and industrial waste discharged into water.

11. CWA Section 502(12), 33 U.S.C. § 1362(12), defines “discharge of a pollutant” to include “any addition of any pollutant to navigable waters from any point source.”

12. CWA Section 502(7), 33 U.S.C. § 1362(7), defines “navigable waters” as “the waters of the United States, including the territorial seas.”

13. CWA Section 502(14), 33 U.S.C. § 1362(14), defines “point source” to mean “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container. . . from which pollutants are or may be discharged.”

Prohibition Against the Discharge of Oil

14. CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3), prohibits the discharge of oil, *inter alia*, into or upon the navigable waters of the United States or adjoining shorelines in such quantities as the President determines may be harmful to the public health or welfare or the environment of the United States.

15. CWA Section 311(a)(7), 33 U.S.C. § 1321(a)(7), defines “person” to include “an individual, firm, corporation, association, and a partnership.”

16. CWA Section 311(a)(2), 33 U.S.C. § 1321(a)(2), defines “discharge” to include “any spilling, leaking, pumping, pouring, emitting, emptying or dumping,” except as specifically excluded therein.

17. CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1), defines “oil” to mean “oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.”

18. CWA Section 311(a)(10), 33 U.S.C. § 1321(a)(10), defines “onshore facility” to mean “any facility including, but not limited to, motor vehicles and rolling stock of any kind located in, on, or under, any land within the United States other than submerged land.”

19. CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6), defines “owner or operator” to mean, in the case of an onshore facility, “any person owning or operating such onshore facility.”

20. Pursuant to CWA Section 311(b)(4), 33 U.S.C. § 1321(b)(4), EPA has determined by regulation that the quantities of oil that may be harmful to the public health or welfare or the environment of the United States are discharges of oil that: (i) violate applicable water quality standards, or (ii) cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines, or (iii) cause a sludge or emulsion to be deposited beneath the surface of the water or upon the adjoining shorelines. 40 C.F.R. § 110.3.

Spill Prevention, Control and Countermeasure Requirements

21. CWA Section 311(j)(1), 33 U.S.C. § 1321(j)(1), authorizes the President to establish (i) methods and procedures for removal of discharged oil, (ii) criteria for the

development and implementation of local and regional oil removal contingency plans, (iii) procedures, methods, and requirements for equipment to prevent discharges of oil from onshore facilities and to contain such discharges.

22. Pursuant to its authority under CWA Section 311(j)(1), 33 U.S.C. § 1321(j)(1), EPA promulgated regulations at 40 C.F.R. Part 112 (“Oil Pollution Prevention Regulations”). The Oil Pollution Prevention Regulations apply to owners and operators of non-transportation-related onshore facilities engaged in, *inter alia*, gathering, storing, transferring, or distributing, oil and oil products which, due to their location, could reasonably be expected to discharge oil in quantities that EPA has determined may be harmful into, or upon, the navigable waters of the United States or adjoining shorelines.

23. Regulations at 40 C.F.R. Part 112.2 define a “facility” to mean “any mobile or fixed, onshore or offshore building, structure, installation, equipment, pipe, or pipeline. . .” used in, *inter alia*, “oil storage, oil gathering, oil processing, oil transfer, oil distribution, and waste treatment.”

24. Appendix A to 40 C.F.R. Part 112 defines “non-transportation-related onshore and offshore facilities” to mean, *inter alia*, “[o]il storage facilities including all equipment and appurtenances related thereto, as well as fixed bulk plant storage, terminal oil storage facilities, consumer storage, pumps and drainage systems used in the storage of oil.”

25. Regulations at 40 C.F.R. Part 112 apply to non-transportation-related onshore facilities that have oil in certain types of tanks or containers; including, *inter alia*, any aboveground container, any container that is used for standby storage, for seasonal storage or for temporary storage, or not otherwise “permanently closed,” as defined therein. 40 C.F.R. § 112.1.

26. Regulations at 40 C.F.R. § 112.3(a) require owners and operators of onshore and offshore facilities and that could reasonably be expected to discharge oil in harmful quantities into or upon the navigable waters of the United States or adjoining shorelines, to prepare and implement SPCC Plans. Regulations at 40 C.F.R. § 112.3(a) also require owners and operators of onshore and offshore facilities that were operational on or before August 16, 2002, to amend their existing SPCC plans as required by 40 C.F.R. § 112.3(a).

Injunctive Relief

27. CWA Section 309(b), 33 U.S.C. § 1319(b), authorizes the Administrator of EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation for which he is authorized to issue a compliance order under CWA Section 309(a), 33 U.S.C. § 1319(a).

Civil Penalties

28. CWA Section 309(d), 33 U.S.C. § 1319(d), provides that: “[a]ny person who violates [CWA Section 301, 33 U.S.C. § 1311] . . . shall be subject to a civil penalty not to exceed \$25,000 per day for each violation.”

29. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, increased the maximum penalty for violations of CWA Section 301 to \$27,500 per day for violations occurring between January 30, 1997 and March 15, 2004, and to \$32,500 per day for violations occurring after March 15, 2004 to the present.

30. CWA Section 311(b)(7)(A), 33 U.S.C. § 1321(b)(7)(A), provides that:

Any person who is the owner, operator, or person in charge of any vessel, onshore facility, or offshore facility from which oil or a hazardous substance is discharged in violation of [Section 311 (b)(3) of the CWA], shall be subject to a civil penalty in an amount up to \$25,000 per day of violation or in an amount up to \$1,000 per barrel of oil or unit of reportable quantity of hazardous substances discharged.

31. CWA Section 311(b)(7)(C) provides that:

Any person who fails or refuses to comply with any regulation issued under subsection (j) of this section shall be subject to a civil penalty in an amount up to \$25,000 per day of violation.

32. CWA Section 311(b)(7)(D) provides that:

In any case in which a violation of paragraph (3) was the result of gross negligence or willful misconduct of a person described in subparagraph (A), the person shall be subject to a civil penalty of not less than \$100,000, and not more than \$3,000 per barrel of oil or unit of hazardous substance discharged.

33. CWA Section 311(a)(13), 33 U.S.C. § 1321(a)(13), defines “barrel” to mean forty-two United States gallons at 60 degrees Fahrenheit.

34. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19: increased the maximum penalty for violations of CWA Section 311(b)(3) to \$1,100 per barrel of oil or unit of hazardous material discharged, or \$27,500 per day for violations occurring after January 30, 1997 and to \$32,500 per day for violations occurring after March 15, 2004; increased the maximum penalty for violations that are the result of gross negligence or willful misconduct to not less than \$110,000 and not more than \$3,300 per barrel of oil or unit of

hazardous material discharged, if the violation occurred between January 30, 1997 and, if the violation occurred after March 15, 2004 to the present, increased the maximum penalty to not less than \$130,000 per day and not more than \$4,300 per barrel of oil or unit of hazardous material discharged.

35. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and 40 C.F.R. Part 19, increased the maximum penalty for violations of regulations implementing Section 311(j) to \$27,500 per day for violations between January 30, 1997 and March 15, 2004, and to \$32,500 per day for violations occurring after March 15, 2004 to the present.

36. CWA Section 311(b)(11), 33 U.S.C. § 1321(b)(11), provides that civil penalties may not be assessed under both Section 311 and Section 309 of the CWA for the same discharge.

FIRST CAUSE OF ACTION

37. Plantation is a "person" within the meaning of CWA 311(a)(7), and 502(5), 33 U.S.C. §§ 1311(a), 1321(a)(7), and 1362(5); and is an "owner or operator" within the meaning of CWA Section 311(a)(6), 33 U.S.C. § 1321(a)(6).

38. The Pipeline System is a "point source" within the meaning of CWA Section 502(14), 33 U.S.C. § 1362(14).

39. The Pipeline System is an "onshore facility" within the meaning of CWA Section 311(a)(10), 33 U.S.C. § 1321(a)(10).

40. On January 10, 2000, Defendant discharged approximately 4,200 gallons (100 barrels) of jet fuel and/or gasoline from a portion of its Pipeline System located in Newington, Virginia, some of which entered Accotink Creek and its adjoining shoreline.

41. Accotink Creek flows into the Potomac River. Accotink Creek and the Potomac River are “navigable waters” and “waters of the United States,” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

42. The jet fuel and/or gasoline discharged by Defendant was a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6), and was an “oil” within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

43. This discharge of jet fuel and/or gasoline caused a sheen or discoloration of the receiving waters and/or violated applicable water quality standards, and was a discharge in a quantity that EPA has concluded may be harmful to the public health or welfare or the environment of the United States. 40 C.F.R. § 110.3.

44. Defendant discharged a pollutant from a point source into waters of the United States without authority under the CWA, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a)

45. Defendant discharged oil in a quantity as may be harmful to waters of the United States or adjoining shorelines, in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

SECOND CAUSE OF ACTION

46. The allegations of the foregoing paragraphs are incorporated herein by reference.

47. On or about March 13, 2002, Defendant discharged approximately 825 gallons (19.65 barrels) of oil or jet fuel from a portion of the Pipeline System located in Alexandria, Virginia, into a storm drain system that flows into an unnamed tributary of Hooff Run.

48. Hooff Run flows into Cameron Run, and the Potomac River. Hooff Run, Cameron Run, and the Potomac River are “navigable waters” and “waters of the United States,” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

49. The oil or jet fuel discharged by Defendant was a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6) and an “oil” within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

50. The quantity of oil or jet fuel discharged by Plantation caused a sheen or discoloration of the receiving waters and/or violated applicable water quality standards, and was a discharge in a quantity that EPA has concluded may be harmful to the public health or welfare or the environment of the United States, as set forth in 40 C.F.R. § 110.3.

51. Defendant discharged a pollutant from a point source into waters of the United States without authority under any the CWA, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

52. Defendant discharged oil in a quantity as may be harmful to waters of the United States or adjoining shoreline in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

THIRD CAUSE OF ACTION

53. The allegations of the foregoing paragraphs are incorporated herein by reference.

54. Plantation owns and operates an oil transfer and storage facility in Newington, Virginia (“Newington Facility”). The Newington Facility is located approximately one-half mile from Accotink Creek.

55. Among other equipment in the Newington Facility, Defendant owns or operates one aboveground storage tank, known as "Tank 113," with a storage capacity of approximately 410,000 gallons of oil.

56. Tank 113 is a fixed, on-shore building structure used for oil storage, oil gathering, oil processing, oil transfer, or oil distribution.

57. Tank 113 is an aboveground container that is not otherwise "permanently closed" within the meaning of 40 C.F.R. § 112.

58. Tank 113 is used to store off-specification oil, also known as "transportation mix," or "transmix," which is an "oil" as defined in CWA Section 311 (a)(1), 33 U.S.C. § 1321, before it is sent to a loading rack and loaded into trucks for further distribution in commerce.

59. Tank 113 is an "onshore facility" within the meaning of CWA Section 311 (a)(10), 33 U.S.C. § 1321(a)(10), and 40 C.F.R. § 112.2, and a "non-transportation-related" facility within the meaning of 40 C.F.R. Part 112.

60. Due to its location, Tank 113 could reasonably be expected to discharge oil, in a quantity that EPA has determined may be harmful to the public health or welfare or the environment of the United States, into or upon a navigable water of the United States or adjoining shorelines.

61. In written correspondence to Plantation, dated November 17, 2000, January 10, 2001, and August 29, 2002, and on several other occasions, EPA informed Plantation that EPA had conducted inspections of Tank 113, and that Plantation was in violation of the requirement in 40 C.F.R. Part 112 to develop and maintain a written SPCC plan for Tank 113.

62. Plantation's failure to comply with 40 C.F.R. § 112.3 was a violation of regulations promulgated pursuant to CWA Section 311(j), 33 U.S.C. § 1321(j).

FOURTH CAUSE OF ACTION

63. The allegations of the foregoing paragraphs are incorporated herein by reference.

64. On or about February 22, 2003, Defendant discharged approximately 33,096 gallons (788 barrels) of gasoline from a portion of the Pipeline System located in Hull, Georgia, into an unnamed tributary of East Sandy Creek.

65. East Sandy Creek flows into Sandy Creek, which flows into the North Oconee River. The unnamed tributary of East Sandy Creek, East Sandy Creek, Sandy Creek, and the North Oconee River are "navigable waters" and "waters of the United States," within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

66. The gasoline discharged by Defendant was a "pollutant" within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6) and an "oil" within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

67. The quantity of gasoline or oil discharged by Plantation caused a sheen or discoloration of the receiving waters and/or violated applicable water quality standards, and was a discharge in a quantity that EPA has concluded may be harmful to the public health or welfare or the environment of the United States, as set forth in 40 C.F.R. § 110.3.

68. Defendant discharged a pollutant from a point source into waters of the United States without authority under the CWA, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

69. Defendant discharged oil in a quantity as may be harmful to waters of the United States or adjoining shoreline, in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

FIFTH CAUSE OF ACTION

70. The allegations of the foregoing paragraphs are incorporated herein by reference.

71. On or about November 27, 2006, Defendant discharged approximately 4,074 gallons (97 barrels) of gasoline from a portion of the Pipeline System located in Mecklenberg County, North Carolina, into Paw Creek.

72. Paw Creek flows into the Catawba River and Lake Wylie. The unnamed tributary of Paw Creek, Paw Creek, the Catawba River, and Lake Wylie are “navigable waters” and “waters of the United States,” within the meaning of CWA Section 502(7), 33 U.S.C. § 1362(7).

73. The gasoline discharged by Defendant was a “pollutant” within the meaning of CWA Section 502(6), 33 U.S.C. § 1362(6) and an “oil” within the meaning of CWA Section 311(a)(1), 33 U.S.C. § 1321(a)(1).

74. The quantity of gasoline or oil discharged by Plantation caused a sheen or discoloration of the receiving waters and/or violated applicable water quality standards, and was a discharge in a quantity that EPA has concluded may be harmful to the public health or welfare or the environment of the United States, as set forth in 40 C.F.R. § 110.3.

75. Defendant discharged a pollutant from a point source into waters of the United States without authority under the CWA, in violation of CWA Section 301(a), 33 U.S.C. § 1311(a).

76. Defendant discharged oil in a quantity as may be harmful to waters of the United States or adjoining shoreline, in violation of CWA Section 311(b)(3), 33 U.S.C. § 1321(b)(3).

SIXTH CAUSE OF ACTION

77. The allegations of the foregoing paragraphs are incorporated herein by reference.

78. Defendant is a "person" within the meaning of N.C. Gen. Stat. § 143-215.77(13).

79. The gasoline discharged to an unnamed tributary of Paw Creek is "oil" within the meaning of N.C. Gen. Stat. § 143-215.77(8).

80. N.C. Gen. Stat. § 143-215.83 makes it unlawful to discharge, or cause to be discharged, oil or other hazardous substances into or upon the waters or lands within the State of North Carolina, regardless of the fault of the person having control over the oil or other hazardous substance, or, regardless of whether the discharge was the result of intentional or negligent conduct, accident or other cause, without first obtaining a permit under N.C. Gen. Stat. § 143-215.1, or unless otherwise allowed under N.C. Gen. Stat. § 143-215.83(b).

81. Plantation violated N.C. Gen. Stat. § 143-215.83 by discharging oil on lands and into waters of the State of North Carolina.

82. N.C. Gen. Stat. § 143-215.88A provides that a civil penalty of not more than \$5,000 per violation may be assessed against any person who intentionally or negligently discharges oil or other hazardous substance, or knowingly causes or permits the discharge of oil in violation of Article 21 A of Chapter 143 of the General Statutes, or fails to report a discharge as required by N.C. Gen. Stat. § 143-215.85, or who fails to comply with the requirements of N.C. Gen. Stat. § 143-215.84.

REQUEST FOR RELIEF

WHEREFORE, the United States and the State of North Carolina respectfully request that this Court grant judgment to Plaintiffs as follows:

A. Imposing civil penalties up to \$1,100 per barrel of oil discharged and, to the extent that the violations were the result of gross negligence or willful misconduct, imposing civil penalties of up to \$3,300 per barrel of oil discharged for violations that occurred prior to March 15, 2004 and up to \$4,300 for violations that occurred after March 15, 2004, pursuant to CWA Section 311(b), 33 U.S.C. § 1321(b).

B. Imposing civil penalties for each day of each violation of CWA Section 311(j), 33 U.S.C. § 1321(j), and of the SPCC regulations at 40 C.F.R. Part 112, up to \$27,500 for each day of each violation after January 30, 1997 through March 15, 2004, and \$32,500 for each day of each violation after March 15, 2004 to the present.

C. Granting injunctive relief pursuant to Section 309(b) of the CWA, 33 U.S.C. § 1319(b), as may be necessary to prevent future violations from Defendant's facilities.

D. Granting injunctive relief as may be necessary to ensure implementation of the regulations at 40 C.F.R. Part 112 at Defendant's facilities, and to protect and restore the waters of the United States.

E. Imposing civil penalties of not more than \$5,000 per violation of Chapter 143 of the North Carolina General Statutes.

F. Granting such other relief as the Court deems just and proper.

Respectfully submitted,

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In the Matter of *U.S. & State of North Carolina v. Plantation Pipeline Co.*

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In the Matter of U.S. & State of North Carolina v. Plantation Pipeline Co.

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